UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THOMAS CHAPMAN   PLAINTIFF

VS.   CIVIL ACTION NO. 4:07CV91TSL-LRA

HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY   DEFENDANT

MEMORANDUM OPINION AND ORDER

     This cause is before the court on the motion of plaintiff

Thomas Chapman to remand. Defendant Hartford Life and Accident

Insurance Company has responded to the motion and the court,

having considered the memoranda of authorities, together with

attachments, submitted by the parties, concludes that the motion

should be denied.

     Plaintiff filed this action seeking to recover long-term

disability benefits he claims were wrongly denied under a

disability insurance policy issued by Hartford Life and Accident

Company (Hartford) through plaintiff's employment with Coca-Coca

Bottling Company (Coca-Cola). Hartford removed this case on the

basis of federal question jurisdiction, contending the plan

pursuant to which the policy was issued is governed by the

Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001

et seq. Plaintiff has moved to remand, arguing that the plan is

not governed by ERISA. However, a review of the pertinent

evidence establishes beyond reasonable dispute that the plan is an

ERISA plan such that plaintiff's claim for benefits is preempted
by ERISA.

ERISA covers certain "employee benefit plans," including "an
employee welfare benefit plan," which is defined as
any plan, fund, or program . . . established or maintained by an
employer or by an employee organization, or by both, to the extent
that such plan, fund, or program was established or is maintained
for the purpose of providing for its participants or their
beneficiaries, through the purchase of insurance or otherwise, ...
medical, surgical, or hospital care or benefits, or benefits in
the event of sickness, accident, disability, death or
unemployment. . . ." 29 U.S.C. § 1002(1).

The decision whether a particular plan or program qualifies
as an "employee welfare benefit" plan under ERISA requires that
the court determine whether a plan: (1) exists; (2) falls within
the safe-harbor provision established by the Department of Labor;
and (3) satisfies the primary elements of an ERISA "employee
benefit plan"--established or maintained by an employer or
employee organization intending to benefit employees or members.
Meredith v. Time Ins. Co., 980 F.2d 352, 355 (5th Cir. 1993)).

To determine whether a plan exists, the court must examine
whether a reasonable person could ascertain the intended benefits,
beneficiaries, source of financing and procedures for receiving
benefits. Id. In this case, there is no dispute that a plan does
indeed exist, and that this plan was established or maintained by
plaintiff's employer intending to benefit its employees. That

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leaves only whether the plan falls under the safe harbor

regulations promulgated by the Department of Labor which excludes

certain insurance and other benefit plans from ERISA's coverage.

The referenced Department of Labor "safe harbor" regulations

provide that the term "employee welfare benefit plan":

> shall not include a group or group-type insurance
> program offered by an insurer to employees or members of
> an employee organization, under which
>
> (1) No contributions are made by an employer or employee
> organization;
> (2) Participation [in] the program is completely
> voluntary for employees or members;
> (3) The sole functions of the employer or employee
> organization with respect to the program are, without
> endorsing the program, to permit the insurer to
> publicize the program to employees or members, to
> collect premiums through payroll deductions or dues
> checkoffs and to remit them to the insurer; and
> (4) The employer or employee organization receives no
> consideration in the form of cash or otherwise in
> connection with the program, other than reasonable
> compensation, excluding any profit, for administrative
> services actually rendered in connection with payroll
> deductions or dues checkoffs.

29 C.F.R. 2510.3-1(j). In order for a plan to be excluded from

ERISA under this provision, all four criteria of the regulation

must be met. McNeil v. Time Ins. Co., 205 F.3d 179, 190 (5th Cir.

2000.

In the case at bar, plaintiff has provided an affidavit in

which he asserts that when the plan was first offered to him, he

was told it was voluntary and that he chose to voluntarily enroll.

However, Hartford has presented substantial evidence which

demonstrates that enrollment in the plan was not voluntary but

rather was automatic. Indeed, the plan itself provided that if

employees failed to select desired coverage, they would

"automatically be enrolled in . . . (the) Long-Term Disability

Plan for Weekly Paid Employees, and receive the following default

coverages: [L]ong-term disability coverage for yourself only."

Hartford has also presented substantial, uncontroverted proof that

Coca-Cola both endorsed the plan and had an active and substantial

role in administering the plan, so that the third requirement of

the safe harbor regulation is not met.[1] In view of this proof,

the court concludes that the plan at issue is governed by ERISA.

Plaintiff's putative state law claims to recover benefits under

the plan are clearly preempted by ERISA, and therefore, his motion

to remand will be denied.

Based on the foregoing, it is ordered that plaintiff's motion

to remand is denied.

SO ORDERED this 26th day of October, 2007.

                                        /s/ Tom S. Lee
                                        UNITED STATES DISTRICT JUDGE

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[1]   Plaintiff claims in his affidavit that he paid the entire premium through payroll deduction and that Coca-Cola paid no part of the premium. Hartford points out in its response that according to the employee handbook, Coca-Cola shares the premiums for the long-term disability plan, and it notes that the first requirement of the safe harbor provision therefore likewise is not satisfied. It does not rely on this as a basis for its motion, however, stating that since it is clear that at least the second and third requirements of the federal regulation cannot be met, it is irrelevant whether this requirement has been met.